



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The P-12 Education Committee

FROM: Angélica Infante-Green *A. Infante - Green*

SUBJECT: Proposed Amendments to Sections 100.5 and 200.4 of the Commissioner's Regulations Relating to the Superintendent Determination Option for Certain Students with Disabilities to Graduate with a Local Diploma

DATE: March 28, 2018

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment to §100.5 and §200.4 of the Commissioner's regulations relating to the superintendent determination option for certain students with disabilities to graduate with a local diploma?

Reason(s) for Consideration

Implementation of policy.

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at its April 2018 meeting. A Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on April 25, 2018. A statement of facts and circumstances justifying the emergency is included as Attachment A.

Procedural History

In June 2016, the Board of Regents adopted regulations to automatically require superintendents to make a determination for every student with a disability who did not meet the graduation requirements through the existing appeal and safety net options. In response to public comment and questions raised by the field, the regulations were subsequently revised and adopted on an emergency basis at the October 2016 Board of Regents meeting to require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination option upon receipt of a written request from an eligible student's parent or guardian; the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma; and that the development of transition goals and services at a committee on special education meeting include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination option. The regulation, as revised, was adopted as a permanent rule at the December 2016 Board of Regents meeting.

At the December 2017 Board of Regents Meeting, the Board adopted the proposed amendments as an emergency measure, effective December 17, 2017. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received significant comment on the proposed amendment. A second emergency adoption was taken at the February 2018 Board of Regents meeting, effective March 11, 2018, to ensure that the proposed amendment adopted at the December 2017 Board of Regents meeting remained continuously in effect until it could be revised and adopted as a permanent rule. The proposed amendment has been revised in response to public comment. A copy of the revised proposed amendment and an Assessment of Public Comment are attached (see Attachments B and C). Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State provided a superintendent determination option for eligible students to graduate with a local diploma, beginning in June 2016 and thereafter.

Under current regulations, to be eligible for the superintendent determination option to graduate with a local diploma, a student with a disability must meet all conditions as follows:

- The parent/guardian submitted a written request that their child be considered for a superintendent determination;
- The student has a current individualized education program and is receiving special education programs and/or related services;
- The student did not meet the graduation requirements through the low pass (55-64) safety net option or the compensatory safety net option;
- The student has earned the required course credits and has passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents examination areas (English language arts (ELA), mathematics, social studies, and science);
- The student has earned a minimum score of 55 on both the ELA and mathematics Regents examinations or a successful appeal of a score between 52 and 54;
- The student has participated in other Regents examinations, but has not passed one or more of these examinations as required for graduation; and
- The student has otherwise demonstrated competency in the subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the Regents examination.

Summary of Amendments Adopted in December 2017 and February 2018

The proposed amendment allowed students with disabilities, otherwise eligible to graduate beginning January 2018 and thereafter, who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. For these students, the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in ELA and/or mathematics, in addition to any other subject areas where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) required for graduation.

In addition, because some students may not have had the opportunity to work towards earning the CDOS Commencement Credential and would be unable to use the credential to meet the ELA and mathematics Regents examinations eligibility conditions for the superintendent determination option, the proposed rule includes an exception to certain requirements to allow appropriate discretion to school principals to determine

whether students have otherwise demonstrated the knowledge and skills related to the CDOS learning standards sufficient for entry-level employment. Specifically, for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the exception would allow school districts, registered nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards 1, 2 and 3a. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrates the student has readiness skills for entry-level employment. However, for students who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the total hours of the career and technical education coursework and/or work-based learning activities may be less than the required equivalent of two units of study (216 hours).

Students who are awarded the CDOS Commencement Credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway to a local or Regents diploma.

Revisions to proposed amendment as a result of public comment

Since publication of the proposed amendment in the State Register on December 27, 2017, the following substantial revisions have been made to address public comment and to clarify the proposed rule:

- Sections 100.5(d)(12) and 200.4(d)(2)(ix)(b)(3) of the Commissioner's Regulations have been amended to replace the term "superintendent determination pathway" with "superintendent determination option" to clarify that the superintendent determination is an option, not a pathway, for students with disabilities to graduate with a local diploma.
- Section 100.5(d)(12)(ii)(d) has been revised to clarify that students with disabilities who use the CDOS Commencement Credential to meet the ELA and/or mathematics Regents examinations eligibility conditions for the Superintendent Determination option, but have met all the assessment requirements for the remaining Regents examinations required for graduation, would be eligible for consideration of a local diploma through the superintendent determination option.

Related Regents Item(s)

[Meeting of the Board of Regents February 2018](http://www.regents.nysed.gov/meetings/2018/2018-02/meeting-board-regents-0)

(<http://www.regents.nysed.gov/meetings/2018/2018-02/meeting-board-regents-0>)

[P12 Education December 2017](http://www.regents.nysed.gov/meetings/2017/2017-12/p-12-education)

(<http://www.regents.nysed.gov/meetings/2017/2017-12/p-12-education>)

[Meeting of the Board of Regents September 2016](http://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents-0)

(<http://www.regents.nysed.gov/meetings/2016/2016-09/meeting-board-regents-0>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That the emergency action taken at the February 2018 Board of Regents meeting to amend paragraph (12) of subdivision (d) of §100.5 of the Regulations of the Commissioner of Education, is rescinded, effective April 24, 2018 and that paragraph (12) of subdivision (d) of §100.5 of the Regulations of the Commissioner of Education and subclause (3) of clause (a) of subparagraph (ix) of paragraph (2) of subdivision (d) of §200.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 25, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that certain students with disabilities who are graduating from high school in January 2018 and thereafter are aware that they may be considered an eligible student for the superintendent determination option if they meet the requirements of the proposed rule. It is also necessary to ensure that superintendents are on notice that they must, upon the written request of a parent or guardian, make a determination as to whether certain students with disabilities are eligible for a local diploma, if the student meets the requirements of the proposed rule.

Timetable for Implementation

If adopted at the April 2018 meeting, the revised emergency rule will become effective on April 25, 2018. It is anticipated that the proposed amendment will be presented for permanent adoption at the July 2018 Board of Regents meeting after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on April 25, 2018 and expiration of the 30-day public comment period for revised rule makings. If adopted at the July 2018 Board of Regents meeting, the proposed amendment will be effective as a permanent rule on August 1, 2018.

Attachments

8 NYCRR §§100.5 & 200.4

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the Regents English language arts (ELA) and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-18 school year or 2018-19 school year only, a school district, registered nonpublic high school and charter school to award the CDOS Commencement Credential to a student with a disability who has not met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. Students who are awarded the CDOS commencement credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway option.

The proposed amendment was readopted as a second emergency measure, effective March 11, 2018, to ensure that the emergency rule adopted at the December 2017 Board of Regents meeting remained continuously in effect until it could be adopted as a permanent rule.

The proposed amendment has now been revised in response to public comment. For instance, Sections 100.5(d)(12) and 200.4(d)(2)(ix)(b)(3) of the Commissioner's Regulations have been amended to replace the term "superintendent determination pathway" with "superintendent determination option" to clarify that the superintendent determination is an option, not a pathway, for student with disabilities to graduate with a local diploma. Section 100.5(d)(12)(ii)(d) has also been revised to clarify that students who use the CDOS Commencement Credential to meet the ELA and/or mathematics Regents examinations eligibility conditions for the Superintendent Determination option but have met all the assessment requirements for the remaining Regents examinations required for graduation, would be eligible for consideration of a local diploma through the Superintendent Determination option.

It is anticipated that the revised rule will be presented for adoption as a permanent rule at the July 2018 Board of Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings. A third emergency adoption, effective April 25, 2018 is necessary to adopt the revisions made in response to public comment and to otherwise ensure that the rule remains continuously in effect until the rule can be adopted as a permanent rule and to ensure that certain students with disabilities who are otherwise eligible to graduate from high school in January 2018 and thereafter are aware that they may be considered an eligible student for the superintendent determination option if they meet the requirements of the proposed rule. It is also necessary to ensure that superintendents are on notice that they must make a determination as to whether certain

students with disabilities are eligible for a local diploma, if the student meets the requirements of the proposed rule.

Attachment B

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

1. The emergency action taken at the February 2018 Board of Regents meeting to amend paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, is rescinded, effective April 24, 2018.

2. Paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

(12) Superintendent determination [pathway] option for certain students with disabilities for eligibility for a local diploma.

(i) For purposes of this paragraph only, superintendent shall mean the superintendent of a school district; or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable.

(ii) School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal options, [including] the compensatory score option, and/or the 55-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination [pathway] option in accordance with the requirements of this paragraph, provided that the student:

(a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title;

(b) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(c) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (v) of this paragraph; and

(d) participated in the remaining Regents examinations required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (7)(vi)(c) of this subdivision; provided that nothing in this clause shall prohibit a student who uses the New York State career development and occupational studies commencement credential to meet requirements of clauses (b) and/or (c) of this subparagraph from requesting a review by the superintendent to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities only for the subject area(s) of English language arts and/or mathematics; and

(e) has earned the required course credits pursuant to this section and passed, in accordance with district policy, all courses required for graduation.

(iii) For each eligible student under this paragraph, the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) and document such determination in accordance with the following procedures:(a) the superintendent shall consider evidence that the student attained a grade for the course that meets or exceeds the required passing grade by the school for the subject area(s) under review and such grade is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year. Such evidence may include, but need not be limited to, the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, class work, quizzes and tests; and

(b) the superintendent shall consider the evidence that demonstrates that the student actively participated in the Regents examination(s) for the subject area(s) under review; and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this paragraph and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student and parent or person in parental relation to the student with a copy of the completed form and written notification of the superintendent's determination, and place a copy of the completed form in the student's record.

(1) Where the superintendent determines that the student has not met the requirements for graduation pursuant to this paragraph, the written notice shall inform the student and parent or person in parental relation to the student that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.

(2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall receive prior written notice pursuant to the requirements of section 200.5(a)(5)(ii) of this Title indicating that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this paragraph.

(iv) On or after October 18, 2016, a superintendent shall only make a determination under this paragraph upon receipt of a written request from an eligible student's parent or guardian. Such request shall be submitted in writing to the student's school principal or chairperson of the district's committee on special education. A written request received by the school principal, chairperson of the district's committee on special education, or

any other employee of the school as applicable, shall be forwarded to school superintendent immediately upon its receipt.

(v) On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the English and/or mathematics Regents exams shall be considered an eligible student for the superintendent determination option pursuant to this paragraph, provided that the student has completed the requirements for the New York State career development and occupational studies commencement credential pursuant to section 100.6(b) of this Part.

(a) For students with disabilities who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year only, the school district, registered nonpublic high school or charter school may award the career development and occupational studies commencement credential to a student who has not met all of the requirements in section 100.6(b)(3)(ii) of this Part, for purposes of eligibility for the superintendent determination option pursuant to this paragraph, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development and occupational studies learning standards. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrate the student has readiness skills for entry-level employment. Students who are awarded the career development and occupational studies commencement credential pursuant to this clause may not use such credential to meet the requirements set forth in section

100.5(d)(11) of this Part for the career development and occupational studies pathway to a local or Regents diploma.

(b) The superintendent shall, in accordance with the requirements of subparagraph (iii) of this paragraph, conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in English language arts and/or mathematics, in addition to reviewing any other subject areas required for graduation where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination pursuant to clause (ii)(d) of this paragraph.

3. Subclause (3) of clause (b) of subparagraph (ix) of paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

(3) the appeal, safety net and superintendent determination [pathway] options that may be available to the student through section 100.5 of this Title to allow the student to meet the graduation assessment requirements.

8 NYCRR §100.5

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on December 27, 2017, the State Education Department (SED) received the following comments on the proposed amendment.

1.COMMENT:

Support permitting students unable to score 55 on English language arts (ELA) and math Regents examinations (“Regents”) (52-54 with appeal) to seek Superintendent Determination (SD) by earning Career Development and Occupational Studies (CDOS) Commencement Credential (“Credential”). Support awarding diploma for achievement, vocational training, and alternative pathways. Pleased Board of Regents (BOR) continues exploring nonexamination-based diploma pathways. Safety net essential; unconscionable to deny diploma due to testing requirements. Proposal recognizes parents’ concerns; restores local diploma for students who cannot achieve low-pass scores on ELA and math; allows students to demonstrate capabilities, be acknowledged for efforts, engage in post-school activities, and recognizes high school completion; broadens opportunities; removes Regents as graduation barrier for students struggling with tests; expands graduation pathways while maintaining high standards; provides meaningful diploma; levels playing field; provides balanced approach of skill attainment; allows students to realize potential and become independent, successful adults.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

2.COMMENT:

Reconsider decision. Proposal lowers bar; reduces graduation/Credential requirements; leaves much to principal interpretation; diminishes diploma value; will not improve academic performance or prepare students for post-school success; dilutes standards; does not allow demonstration of knowledge or provide students access to same curriculum/opportunities as nondisabled peers; provides no accountability; is statistical move to improve graduation rate; undercuts opportunities for income, independence and success; does not go far enough; allows students to fall through cracks. Diploma may be seen as inferior/less rigorous. Concerned about lower standards impact on minority students and long-term effects/benefits of proposal. Sends message to students they are incapable and to take easy way out; will not work to full potential if safety net available. Results in same skill levels as under individualized education program (IEP) diploma. May impact Social Security Supplemental insurance (SSI) benefits if disability prevents competitive employment. Students want to be treated like everyone else. Give students tools for success. Show connection between diploma and job skills.

DEPARTMENT RESPONSE:

Requirements to earn a diploma remain rigorous. Students must demonstrate proficiency of standards in subject areas where they did not meet graduation assessment requirements, and in CDOS-standards sufficient for entry-level employment. Students must continue to have meaningful access to general education curriculum and meet all other SD eligibility requirements (See

<http://www.regents.nysed.gov/common/regents/files/1016p12a1.pdf>). SSI eligibility is beyond scope of rule.

3.COMMENT:

Ensure students held to high standards and not pushed out of school. Require parent sign-off versus superintendent deciding modified degree. Is parent/guardian request still needed?

DEPARTMENT RESPONSE:

Students may only be considered for SD upon written parent/guardian request.

4.COMMENT:

Educate parents in native language; develop materials explaining graduation pathways versus credentials, options available to alternate assessment students, what diploma options mean for post-secondary opportunities and parents' rights. Teachers should know graduation options.

DEPARTMENT RESPONSE:

Districts are responsible for providing parents written information; explaining applicable graduation requirements at CSE meetings for transition-age students; and ensuring parents understand discussions and their rights and teachers know current graduation requirements. See <http://www.p12.nysed.gov/specialed/gradrequirements/home.html> for information on graduation requirements/credentials

5.COMMENT

Which cohorts are eligible to use proposal relating to SD eligibility conditions?

DEPARTMENT RESPONSE:

Rule applies to students eligible to graduate in January 2018 and thereafter.

6.COMMENT:

Clarify reenrollment process for students under 21, including those who completed exams/earned required credits. Expand to students over 21 who exited with Credential and met current criteria upon exiting, with conferral retroactive to exit date; or establish process to grant high school equivalency(HSE) certificates.

DEPARTMENT RESPONSE:

Students with disabilities may reenroll up to and including the end of the school year in which they turn 21 and be considered for SD provided they have current IEP, are receiving special education programs/services, and are participating in coursework when SD is made. Law prohibits adopting regulations that impose retroactive policy. The HSE is an available option for individuals who are not covered by this regulation.

7.COMMENT:

Confirm proposal allows five Regents scores below 52.

DEPARTMENT RESPONSE:

Students may use SD on up to five subject areas where they did not pass required Regents provided they are using the CDOS Credential to meet math and ELA eligibility conditions.

8.COMMENT:

Clarify if CDOS Credential:

- can be used for both ELA and math eligibility conditions and CDOS pathway;
- earned through Option 1/2 can be used for SD eligibility;
- waiver still exists for transfer students.

DEPARTMENT RESPONSE:

CDOS Credential can be used for both ELA and Math eligibility conditions and CDOS pathway; provided that students awarded the CDOS Credential under two-year exception period (2017-18/2018-19 school-years) for SD eligibility cannot use such Credential for the CDOS pathway.

Credential earned through Option 1/2 can be used to meet ELA and/or math eligibility conditions.

No changes were made to provision allowing principals to evaluate transfer students' transcripts to award CDOS Credential.

9.COMMENT:

Revise §100.5(d)(12)(i) to clarify principal can make SD.

DEPARTMENT RESPONSE:

Semicolon has been added to §100.5(d)(12)(i) to clarify only superintendents of public schools (or principals of registered nonpublic or charter schools) may conduct SD.

10.COMMENT:

Regulations require that students participated in other required Regents but did not pass one or more for SD eligibility. Are students who pass all Regents except ELA and/or math disqualified from SD option?

DEPARTMENT RESPONSE:

Rule has been revised to clarify students who use CDOS Credential to meet ELA and/or math eligibility condition(s) but meet remaining assessment requirements are eligible for SD.

11.COMMENT:

Can credit deficient students use SD? Must students sit for Regents to be eligible?

DEPARTMENT RESPONSE:

To be considered for SD, students must have earned credits required under §100.5 and actively participated in Regents in subject area(s) under review.

12.COMMENT:

Clarify SD is option versus pathway to graduation to be used only after all other special education services/supports/accommodations and safety nets are exhausted.

DEPARTMENT RESPONSE:

Rule revised to replace “pathway” with “option.”

13.COMMENT:

Confirm CDOS Credential is not diploma and students exiting with only CDOS Credential are not graduates. How are these students included in graduation data?

DEPARTMENT RESPONSE:

CDOS Credential is not diploma and such students are considered completers. Students earning local diploma through SD are graduates.

14.COMMENT:

Is there a cap on students receiving local diploma through SD?

DEPARTMENT RESPONSE:

No cap; however, SD should only be used when students do not meet assessment requirements through existing appeal/safety net options.

15.COMMENT:

Does rule apply to students with Section 504 plans?

DEPARTMENT RESPONSE:

SD does not apply to students with 504 plans.

16.COMMENT:

Question emergency measure; problem existed for years. No time to communicate and systematize policy.

DEPARTMENT RESPONSE:

Emergency action was necessary to ensure eligible students and superintendents were aware that students who meet requirements must be considered for SD beginning January 2018.

17.COMMENT:

Provide guidance defining/supporting meaningful “consultation with relevant faculty.” Clarify evidence needed under two-year exception to Credential requirements; and if 54 work-based-learning (WBL) hours are required and employment outside of school counts. Awarding Credential to students who did not do work does not demonstrate career-readiness; fails to represent students’ capabilities; trivializes accomplishments of students completing requirements; and reduces likelihood of businesses hiring students.

DEPARTMENT RESPONSE:

Consultation necessary to determine that a student otherwise demonstrates knowledge and skills relating to CDOS-standards will depend on the student. To award CDOS-Credential to students who have not met all requirements during two-year exception period, principals must have evidence that such students successfully completed relevant instructional and WBL activities that demonstrate readiness-skills for entry-level employment. Total hours of career and technical education (CTE) coursework and/or WBL may be less than 216. No minimum WBL hours are required. Independent employment outside of school cannot count toward WBL.

18.COMMENT:

CDOS Credential not recognized by adult-learning programs or businesses. Essential businesses partner with schools in developing training/work options. Credential inconsistently implemented; not available in all schools. Postpone implementation until 2019-2020; if not, students should be deemed eligible in limited circumstances where there is evidence schools offer free-standing courses/integrated learning opportunities in CDOS-standards and documentation student completed relevant instructional and WBL activities. Ensure principals know CDOS Credential requirements; provide guidance to ensure equitable/fair implementation.

DEPARTMENT RESPONSE:

SED met with businesses and other constituents in developing CDOS Credential policy framework/requirements. SED declines to delay implementation. CDOS Credential requirements were established beginning with 2013-14 school-year. Districts are responsible for preparing students with disabilities for post-secondary life by providing appropriate transition activities, including relevant coursework, instruction and

services. Because some students may not have had opportunity to work towards CDOS Credential, rule allows principals appropriate discretion to determine whether students have sufficient knowledge of CDOS-standards to qualify for CDOS Credential during two-year exception. Students can also earn Credential by passing an SED approved work-readiness assessment. See guidance at: <http://www.p12.nysed.gov/cte>; <http://www.p12.nysed.gov/specialed/gradrequirements/home.html>.

19.COMMENT:

Make SD available to all students. Limiting proposal to IEP students could create stigma; devalue credential/local diploma; force disability disclosure; track students away from rigorous coursework and limit number of times students allowed to attempt Regents; and create incentive to classify students. Pressures families to advocate for access to Regents-level courses. Identifying that Credential/diploma was granted through SD, will be stigmatizing when obtaining job or further education.

DEPARTMENT RESPONSE:

Proposal recognizes there are certain students with IEPs who, due to their disability, are unable to demonstrate proficiency on Regents. Disagree rule devalues diploma/CDOS Credential. Students using SD must still take and pass Regents-level coursework. It would be inappropriate to identify students for special education solely for purposes of SD eligibility. Diploma/CDOS credential should not indicate it was granted through SD.

20.COMMENT:

Can students over 18, or younger and emancipated, request SD?

DEPARTMENT RESPONSE:

Students may not request SD unless emancipated as NYS law does not transfer special education rights at age-of-majority.

21.COMMENT:

What evidence is sufficient to support students learned content? Revise §100.5(d)(iii) and (v)(b) from “demonstrated proficiency in the knowledge, skills and abilities” to “attainment of NYS standards” in subject area(s) under review. Credit accumulation unreliable measure of standards attainment; should not be exclusive means of determining proficiency. Require course grade minimally be average grade of student scoring 65 on Regents; schools issue guidance that grades reflect attainment of standards, not non-mastery measures; additional evidence standards attained (e.g. portfolio, project-based assessment) or use of Regents standard-setting Performance Level Descriptions. Local grades vary in rigor. Enforce classroom testing standards or eliminate Regents-format tests in courses for graduation.

DEPARTMENT RESPONSE:

Evidence to determine proficiency may include final course grades as well as work completed throughout year and/or interim grades on homework/projects/classwork/quizzes/tests. Such evidence must demonstrate students have met standards in subjects under review. Grading and testing standards/formats are matters of local policy and beyond scope of rule.

22.COMMENT:

Revise IEP form to identify diploma pathways discussed at CSE meeting.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. Will be considered if changes are proposed to mandatory IEP form.

23.COMMENT:

NY one of few states requiring high-stake exams for diploma; review diploma system and assessment design. Appoint commission to reexamine graduation requirements. Safety net menu confusing and leads to disability-only pathways. Recommend simpler system that ensures students given opportunity to demonstrate mastery of standards. Too much emphasis on Regents. Consider alternate pathways for all students (e.g. technical diploma). Eliminate Common Core and Regents. Bring local diploma back for struggling students. Change Regents diploma passing score back to 55. Reinstitute Regents Competency Tests (RCTs) type exam with Credential for all students. Review diploma options/more credentials for alternately-assessed students. Consider absenteeism, suspensions, staff capacity to provide supports; and apprenticeships. Offer local diploma endorsements for Regents scores of 65 or higher to: provide incentive for attempting Regents; allow additional time to master learning; measure if achievement gap closing. Recommend CDOS programming be part of regular curriculum.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. SED will consider these recommendations.

24.COMMENT:

Address at BOR meeting how many students projected to earn diploma using SD; how/when data will be released, including disaggregation; how implementation will

be monitored to prevent misuse; how teacher supports/training will be increased to help meet Regents diploma requirements; how districts will ensure students are meeting ELA and math standards and are prepared for post-secondary education/training; and quality controls for evaluating students against CDOS-standards during two-year exception.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. SED will review SD data.

25.COMMENT:

Can compensatory option be used for ELA and/or math Regents?

DEPARTMENT RESPONSE:

Compensatory option cannot be used for ELA or math scores between 45-54.

26.COMMENT:

Can homeschooled students earn local diploma?

DEPARTMENT RESPONSE:

Comment beyond scope of rule (See 8 NYCRR §100.10 "Home Instruction").

27.COMMENT:

Clarify timeline for moving Regents grading from 100 to 1-5 scale.

DEPARTMENT RESPONSE:

Comment beyond scope of rule.